DOCUMENT RESUME

ED 364 712 CE 065 223

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TITLE Helping Your Older Family Member Handle Finances. A Pacific Northwest Extension Publication. PNW 344.
INSTITUTION Idaho Univ., Moscow. Cooperative Extension Service.; Oregon State Univ., Corvallis. Cooperative Extension Service.; Washington State Univ., Pullman. Cooperative Extension Service.
PUB DATE Aug 93
NOTE 9p.
PUB TYPE Guides - General (050)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Adult Education; Banking; *Basic Business Education; Extension Education; Family Caregivers; *Family Involvement; *Helping Relationship; Home Economics; *Money Management; *Older Adults; Trusts (Financial)

ABSTRACT

This booklet is designed to help individuals help older family members handle their finances. Presented first are 10 guidelines for keeping the tension involved in intervening in an older relative's finances to a minimum. The following financial/legal instruments are explained: joint bank accounts, powers of attorney (including durable powers of attorney), living trusts, representative payees, and conservatorships. A final note and list of suggested readings conclude the booklet. (MN)

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A PACIFIC NORTHWEST EXTENSION PUBLICATION
OREGON • WASHINGTON • IDAHO
PNW 344 • REPRINTED AUGUST 1993

OR065223

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Helping Your Older Family Member Handle Finances

V.L. Schmall and T. Nay

Older people with limited mobility, low vision, loss of hand dexterity, or failing memory frequently need assistance in managing their finances. The assistance needed may be minimal: for example, help with reading fine print, balancing a checkbook, preparing checks for signature, or dealing with Medicare or other benefit programs. Others who are homebound because of poor health, but still able to direct their finances, may need someone to implement their directives. A few older people, because of severe disability, need someone to manage their financial affairs.

Some older people have difficulty accepting help with finances. If you are the person trying to help, you may find it's a delicate balance between providing assistance and assuming control. The situation can be further complicated when tension and misunderstandings develop between family members. In helping an older family member with his or her finances, your intent should always be to assist, not to take away control. The goal is to choose the least intrusive intervention that will enable your family member to remain as independent as possible. Tension may be lessened by following the guidelines on the next page.

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Plan ahead for potential incapacity. Such planning does not prevent problems, but it does give an individual more options and enables the family to act more effectively during future crises.

Remember your relative's capabilities. Too often when a person becomes frail, we tend to focus on what he or she can no longer do. It's equally important to focus on what the person can continue to do.

Give your relative as much control as possible over his or her finances. For example, while your mother may need assistance in managing property and paying large bills, she may be able to pay for groceries and small purchases.

Involve the person, whenever possible, in planning and making decisions.

Maintain your relative's need for financial privacy. Your relative needs some privacy in his/her financial matters, just as in other areas.

Review options periodically as your relative's capacities, assets, and situation change.

Keep your relative informed about financial decisions, even when he or she may not be able to make or remember the decision.

Keep complete records of all income and expenditures. A good bookkeeping system is your best protection. If you are unsure about how to do this, consult with an accountant. Letting other family members know that books are open to their inspection can help build trust.

Keep your family member's money separate from your own. To avoid confusion, have a separate account for your family member's money.

Reconcile the bank statement each month with the checkbook. Some have found it helpful to have the older person, when possible, or another family member check the arithmetic and sign off that it is correct.

Most help is provided informally by families. However, there are formal financial planning tools for helping older relatives. These include joint bank accounts, power of attorney (non-durable and durable), living trusts, representative payee, and conservatorship. Since the effects of each are very different, it's important to identify the needs of the older person and the most appropriate financial planning tools. Court intervention should be used only if less restrictive means are inadequate.

Joint Bank Accounts

A joint bank account can provide an easy way to sign checks and pay a family member's bills. Yet, an older person will still have a sense of control, particularly if he or she retains the checkbook.

A joint account can be set up by either putting a person's name on an account as an "additional authorized signature" or "joint ownership with a right of survivorship." However, an account with the latter designation means that when one owner dies, the account belongs to the survivor. This designation on an account may supercede what is written in a will, should it be different.

A joint account is not without problems. Because anyone named on a joint account can deposit to and withdraw from it, a joint account requires considerable trust. Some states also permit creditors of the helping relative to get some or all of the older person's funds in a joint account. If not properly handled, a joint account can also present complications in terms of taxes, eligibility for government benefits (e.g. Medicaid and Supplemental Security Income), and disposal of funds at death for either party. To avoid such complications, a helping relative should not deposit any of his or her money into the account or withdraw money for personal use.

Power of Attorney

A power of attorney is a written document in which a person (called the "principal") gives another person (called the "attorney in fact") legal authority to act on his or her behalf in financial transactions. It can be a useful tool for the person who is capable of directing his or her finances, but needs assistance in conducting personal business. The person does not lose the right to manage his or her finances, but rather extends that right to someone in addition to himself or herself.

Having trust in the person to whom a power of attorney is given is critical. Since no one supervises the person who has power of attorney, abuses are possible. If this is a concern, one or more people can be appointed as co-attorneys-in-fact, requiring two or more signatures on all transactions. Another method of maximizing security is to retain control over the original power of attorney document. Since financial institutions, such as banks and stockbrokers, will only honor and recognize the original power of attorney, retaining the original reduces the potential of abuse.

The person who has a power of attorney has only those powers specified in the document. The power can be limited to a specific purpose (for example, selling the person's car or signing checks only on a particular bank account) or it can be broad, giving someone authority to conduct all financial transactions. It should state clearly and in detail what authority is being given.

The person granting the power of attorney determines the extent of the power granted. This person should also anticipate the temporary absence, illness, incapacity, or death of the attorney-in-fact with a backup arrangement for an alternate or successor attorney-in-fact. The person granting the power of attorney must be mentally competent and fully understand the effect of the written agreement at the time of signing.

The power of attorney must be in writing, signed and notarized. Standard forms are available in bookstores. If the power of attorney is to be used for real estate transactions, it should be recorded in the county recorder's office of the county where the property is located.

The person authorizing a power of attorney can revoke it at any time. When revoking such power, it's a good idea to send written notification to anyone with whom the attorney-in-fact has done business as well as to the attorney-in-fact, and to record the revocation in the county where property is located.

A power of attorney may end if the older person becomes mentally incapacitated and loses decision-making ability (unless it is a durable power of attorney; see below). It also terminates upon the person's death, or upon an expiration date specified in the power of attorney if the period ends prior to the death or incompetency of the person.

Some financial institutions recognize only a power of attorney drawn upon their forms; therefore, it may be necessary to complete their individual forms.

Durable power of attorney. A durable power of attorney does not terminate if the person granting the power becomes mentally incapacitated. A durable power of attorney can also be written such that it goes into effect only if and when a person becomes incapacitated or incompetent. However, such "springing" effectiveness (so named because the authority of the attorney-in-fact springs into effect when the principal loses mental capacity) can be difficult to recognize and might not be honored by the bank and other institutions. Like the non-durable power of attorney, it must be executed while the person understands the effect of the power of attorney.

The durable power of attorney can avoid conservatorship/guardianship proceedings in the event of incapacity. In many states, medical and health care can also be determined by a durable power of attorney.

State laws vary regarding a durable power of attorney; thus, it should be drawn up by an attorney licensed to practice in the state where the older person lives. In many states, all powers of attorney are presumed to be durable under state law unless limited in the wording of the power of attorney.

Living Trust

A living trust is one way a person can assure management and protection of assets if he or she becomes incapacitated in the future. A trust is a three-party arrangement whereby designated assets are transferred from one person (the grantor) to another person (the trustee) who holds and manages the assets for the benefit of the third (the beneficiary). The grantor, trustee, and beneficiary may be the same person. The trust agreement contains specific instructions about the management and distribution of the assets to the beneficiary.

Trusts are either revocable or irrevocable. A revocable trust remains in a person's control during his or her lifetime, then passes to the beneficiary upon the person's death. The trust can be revoked at any time. An irrevocable trust is controlled by the trustee. The grantor loses control of the assets. Assets in a living trust avoid probate.

A lawyer's help is important in setting up a trust to protect everyone's interest. It's particularly important that the person drafting the living trust is knowledgeable about restrictions on Medicaid eligibility for beneficiaries of living trusts, particularly if there is any possibility the person may need long-term care.

Representative Payee

If your relative is unable to manage his or her Social Security, Veteran's pension, Railroad Retirement, or public benefits checks, a representative payee may be appointed. Checks are then written to the payee on behalf of the beneficiary. This device is most useful when the older person's expenses can be covered by the benefit check(s), since the representative payee is not empowered to gain access to the person's saving accounts or other assets. (If lack of trust in the helping relative is not an issue, direct deposit of the monthly income checks into a joint account is generally convenient.)

To arrange for a representative payee status, contact the appropriate agency for an application form and instructions. Medical confirmation that the older person is not able to manage benefit payments also is required. Notice is sent to the payee, who can object. The representative payee is given instructions on how funds are to be held, managed, and disbursed, and any accounting that is required.

Conservatorship

Sometimes called a "guardianship of the estate" or "guardianship of the property," a conservatorship is a court process whereby an individual secures the right to manage another person's financial affairs after that person has become unable to do so, and a durable power of attorney or living trust is not in operation. Obtaining a conservatorship is a serious step and should be used only as a last resort.

A conservatorship can be created only by action of the court. An attorney must file a petition with the court and a judge decides if the older person is legally competent to manage his or her own affairs or if a conservator should be appointed. In many states, a court hearing is held only if someone objects in writing to the court.

A family member may serve as a conservator. For a large or complex estate, an attorney may be appointed. A Public Guardian may be appointed as a conservator when there is no one else available. A person also can designate in advance who he or she wants the court to appoint as conservator, should the need arise.

Once a conservator is appointed, the person loses the right to make decisions about his or her finances. However, other rights (to vote, to marry, to write a will, and other personal decisions) remain intact unless a guardian or guardian of the person has been appointed.

The conservator is responsible to the court and must make an annual accounting to the court. Most states require the conservator to purchase a bond (insurance policy) equal to the value of the impaired person's estate. Thus, there are several expenses associated with a conservatorship—filing fees, legal fees, bonds, and accounting costs. A conservator may receive a fee set by the court for services and reimbursement for expenses incurred for estate management and for the accounting. A conservator may be removed and replaced by the court that appointed the conservator.

The *Oregon Nursing Home Guidebook* offers important advice to families considering a conservatorship: *"It is always important for family members to examine their motives for seeking conservatorship. Sometimes it is very hard to separate concerns about inheritance from concerns about protecting an older person's money for his or her own needs and wants.*

It is also important, though sometimes difficult, to accept that in a person's old age, they may choose to spend their money in ways that do not meet with their children's approval. An older person may legitimately choose to do things that he or she would never have considered in his or her younger years. Families considering conservatorship must try to be sure that the problem they are attempting to resolve is not simply a conflict between personal values."

A Final Note

Remember, taking away a person's control over finances is a very serious matter. When action must be taken, take only those steps absolutely necessary to help the person.

If you suspect that a time may come when either yourself or a family member may not be able to manage personal finances, make plans in advance. Consider what legal instruments will be best for your particular situation. And, seek legal advice to help you make the wisest decisions. Although it's often difficult to talk about these matters, people facing disability generally are relieved to learn there are ways to retain control.

For Further Reading

The following publications are available from Publications Orders, Agricultural Communications, Oregon State University, Administrative Services A422, Corvallis, OR 97331-2119. We offer discounts on orders of 100 or more copies of a single title. For price quotes, please call (503) 737-2513.

Aging Parents: Helping When Health Fails by V.L. Schmall and L. Isbell. Pacific Northwest Extension publication PNW 246, Oregon State University, Corvallis, 1984. Reprinted 1993. Single copy 50¢.

Coping with Caregiving: How to Manage Stress When Caring for Elderly Relatives by V.L. Schmall and R. Stiehl. Pacific Northwest Extension publication PNW 315, Oregon State University, Corvallis, 1987. Reprinted 1993. Single copy $1.00.

Families and Aging: A Guide to Legal Concerns by V.L. Schmall, T. Nay, and M. Weinstein. Oregon State University Extension publication EC 1221, Corvallis, 1988. Single copy $1.25.

Sensory Changes in Later Life by V.L. Schmall. Pacific Northwest Extension publication PNW 196, Oregon State University, Corvallis, 1980. Reprinted 1993. Single copy $1.00.

Helping Memory-Impaired Elders: A Guide for Caregivers by V.L. Schmall and M. Cleland. Pacific Northwest Extension publication PNW 314, Oregon State University, Corvallis, 1987. Reprinted 1993. Single copy $1.00.

Living Arrangements in Later Life by V.L. Schmall and R. Stiehl. Pacific Northwest Extension publication PNW 318, Oregon State University, Corvallis, 1987. Single copy $1.00.

Depression in Later Life: Recognition and Treatment by V.L. Schmall, L. Lawson, and R. Stiehl. Pacific Northwest Extension publication PNW 347, Oregon State University, Corvallis, 1990. Reprinted 1993. Single copy $1.50.

Alcohol Problems in Later Life by V.L. Schmall, C. Gobelli, and R. Stiehl. Pacific Northwest Extension publication PNW 342, Oregon State University, Corvallis, 1989. Reprinted 1993. Single copy $1.00.

Financing Health Care in Later Life by V.L. Schmall and R. Stiehl. Pacific Northwest Extension publication PNW 345, Oregon State University, Corvallis, 1989. Single copy $1.00.

Published and distributed in furtherance of the Acts of Congress of May 8 and June 30, 1914, by the Oregon State University Extension Service, O.E. Smith, director; Washington State University Cooperative Extension, Harry B. Burcalow, interim director; the University of Idaho Cooperative Extension System, LeRoy D. Luft, director; and the U.S. Department of Agriculture cooperating.

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